

SPEECH

OF

ELI K. PRICE,

On the bill, entitled "An Act relating to Corporations, and to Estates held for Corporate, Religious and Charitable uses," in the Senate of Pennsylvania, March 21, 1855.

Mr. SPEAKER :—

The first and second sections of the bill are to enforce a pure administration of all corporate affairs. The third is to settle a doubt whether stocks, in all our land, building, mining and manufacturing corporations, be real or personal estate, and to make them personal.

The fourth and succeeding sections have the purpose to define the extent to which property may be held for corporate, religious and charitable uses, and the manner of holding such property.

By the general law, corporations may now hold property of the annual value of five thousand dollars; but there is no rule to define how unproductive property shall be estimated, or whether at anything; and yet property of great value is held by corporations or for churches, grave yards, &c., in unproductive lots or wild lands. Some corporations, too, after they have filled their corporate limit, purchase other property in the names of trustees, and thus evade their charter restriction.

But religious societies could at all times take and hold property in Pennsylvania without incorporation; and as it is only corporations that are limited in amount, no unincorporated religious society has ever been or is now limited, as to the extent of the property it may hold. If it is worth while to limit corporations, it is equally worth while to limit those not incorporated; and if worth while to limit either, it is also proper to give a rule by which the limit can be ascertained, and the law carried into practical effect. These are objects intended by this bill.

The purpose of the limitation is not one hostile to religion or charity. It is simply a defensive effort found necessary in every civilized community to guard itself against an undue accumulation of property in *mortmain*, even for good purposes; that is, in a *dead hand*, locked up from sale, exchange, and the general uses of mankind, by corporations or societies that have a legal perpetuity, who never intend to die, who never intend to cease to aggrandize themselves, never to cease to accumulate property, and never to devise or sell

it to others, or to yield the grasp of the dead hand upon it, or to pay revenue for it to the government. It is property to be protected by government, but to pay nothing towards the expenses of that protection. This may be tolerated to a reasonable extent, because churches, schools, hospitals, &c., have purposes consistent with and promotive of the very objects of government, namely, the preservation of good order, good morals, the relief of the suffering portion of humanity, the welfare and happiness of the people.

But good purposes carried into extremes become evils, and require to be checked and adjusted to the line demanded by the general welfare. Already, in 1850, had about a tenth of the real estate in the contracted county of Philadelphia become, for religious, charitable and public uses, exempt from taxation. It is easy to perceive that any great increase of this accumulation would place an amount of property out of the reach of the citizens for dwellings and business, and subject, what was left to them, to an aggravated burthen of taxation that would become inconvenient and oppressive. Yet this work of absorption is always going on by those institutions that are never to die, never to cease to accumulate, and never to change their purpose of retention in perpetuity. It is plain, therefore, that the State that sets such enduring agencies to work, must unceasingly watch and check their movements, when they encroach upon the welfare of the people.

It is the purpose of the bill before the Senate to set a limit to the operation of all these agencies of accumulation into mortmain, alike operative upon all institutions and all sects or religious societies. If our predecessors have not always been mindful of the injunction of the declaration of rights, "that no preference shall ever be given by law to any religious establishment or modes of worship," it is our duty to bring all back to a uniform line, so that no one shall retain that preference.

It is, however, no purpose of this bill to attempt to divest any vested right in property, even where held in excess of the authority of law. On the contrary, it affirms the validity of present possessions, but prescribes the rule beyond which none shall go in making future acquisitions.

Nor is it any purpose of this bill to encroach upon the just rights and privileges of any religious society. It is intended to legislate only so far as may be required for the true welfare of the country, through all times and alike over all the people; and should there be any provision in this bill that will not stand that test, its passage is not desired. We are the more admonished to cautious legislation upon this subject, because we cannot, dare not, touch any right or principle that protects any one sect, without equally invading the right and principle that protects every other, as all must stand clothed with an equal security before the stern justice of impartial law.

It is only by that impartial justice, and a complete repulsion of all alike, from any special governmental favor, that the American people can carry out that great principle of their free institutions, the total separation of church and state, without which their cherished liberty would instantly cease to exist. There can be suffered no secret or open approaches from one to the other, with a view either to attain office or patronage, or legislative exemption or favor, that does not endanger this great principle of human liberty. A uniform rule applied to all alike, can alone become a barrier to that usurpation which would enlist the government in behalf of a clerical assumption of power, or the church in aid of party success or political tyranny. The incipient steps towards an alliance of church and State, by whomsoever made, can never be too jealously watched nor too promptly foiled.

In a republic, the danger of such an alliance is quite as great as in a monarchy, if, indeed, not greater. A king may secure his support from a standing army held to its fidelity to him by the pay it receives from him; but those who owe their possession of power to an elective constituency, naturally obey that constituency; and if there be in it a predominating sectarian element, demanding requital, and of sufficient strength to command it, the

government may succumb and pervert its power to advance a sectarian end. It is obvious, therefore, that American liberty, religious or political, can be secure no longer than the division of the people into differing sects shall so counterpoise each other that no one can obtain a predominating sway. It matters not whether the attempted encroachment or usurpation shall proceed from Baptists, Presbyterians, Episcopalians, Methodists or Catholics; it must be alike promptly resisted, if we would preserve our boasted freedom.

With what individuals or sects, in their freedom of action, may choose to do in the exercise of the elective franchise, the government cannot interfere. It should only stand true to the Constitution, and grant no preference to any religious sect, whomsoever may triumph. If any sects choose to abandon their Christian mission, to seek temporal power or patronage by attempting to wield the balance of power between political parties, it will necessarily invite all others to combine against their pretensions, as a measure of self-protection, alike necessary whether it be one or several sects that shall combine with any political organization. But the contest would be one to be fought out by the people and sects themselves, without governmental interposition, so long as the public peace be undisturbed and no principle of law be violated.

The legislation now proposed, is intended to preserve all religious societies upon an equality of rights in relation to the acquisition and holding of property. If it shall bear more especially upon any one than others, it will be only because such one has obtained special legislation, giving it peculiar privileges over others. If it shall have any special bearing upon our Catholic fellow citizens, it will be only because, from having had, in times past, fewer rights and privileges, they have recently obtained greater than any other of our religious communities.

It becomes necessary to recur to the legislation upon the subject of religious societies, anterior to our Revolution and the Constitution of 1790, to be assured that no right or privilege previously enjoyed, will now be invaded.

After the Lutheran reformation, the Catholics were placed, by our ancestors, under severe disabilities and penalties, that became as soon as any pretext of a State necessity of self-protection ceased, if ever justifiable, certainly then, oppressive and unjust. The founder of Pennsylvania planted in his province the laws of England, and held it subject to the supreme power of the British Parliament, and to a revision and rejection of the acts of the Governor and assembly of the province by the King and privy council in England. The principles of freedom and justice, therefore, which William Penn proclaimed to the world, as those which should govern the freemen of his province, were not beyond the control of the paramount government of England; nor did the first legislation of Pennsylvania, on the subject, place all religious societies upon an equality, for the act of 1731, authorizing religious societies to hold property, extended only to *Protestants*.

The Constitution of Pennsylvania of 1776, immediately following the Declaration of Independence, declared that "all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and *estates which they are accustomed to enjoy*, or could, of right, have enjoyed under the *laws and former Constitution* of this State." Section 45 of the Constitution of 1790 provides, that "the rights, privileges, immunities and estates of religious societies and corporate bodies *shall remain as if the Constitution of this State had not been altered or amended.*"

What, then, were the privileges, immunities and estates which religious and charitable societies were "accustomed to enjoy" before the Revolution? It will soon be seen that neither in England nor in Pennsylvania, were they greater, nor so great, as they will remain to be, should this bill become a law, except that Protestant religious societies, by the act 1731, might acquire property without limit, and may not, hereafter, while Catholics were not,

thereby, authorized to acquire and hold any property at all, and may, hereafter, do so equally with Protestants.

In England so early as 1225, while all England was yet Catholic, by the thirty-sixth section of *Magna Charta*, it was provided "that no land should be given in *mortmain*," and this is the foundation of the various statutes of mortmain. By the statute of mortmain of 1279, lands conveyed in mortmain were declared forfeited. But the ecclesiastics, by collusion, would still recover by suit, lands to be held in mortmain, which occasioned the mortmain act of 1285; and other devices to evade the previous statutes were met by the further statutes of 1290, 1391 and 1531, to prevent acquisitions in mortmain. These statutes were in force in Pennsylvania, except so far as they became limited by our laws, usages and constitutions. But the subjects of them and their purpose have always been within the scope of legislative authority, before and since the Revolution, in manner not to impair the obligations of contracts and not to divest the rights of property.

In 1680, March 4: By the charter of Charles the second to William Penn, he and the assembly of freemen were authorized to enact laws, provided they be consonant to reason and *agreeable to the laws and statutes of England*, but subject to be rejected by the King and privy council.

In 1682, April 2: By the laws agreed upon in England between William Penn and the freemen of the province, it was declared, "That all persons living in this province, who confess and acknowledge the one Almighty and Eternal God to be the creator, upholder and ruler of the world, and that hold themselves obliged in conscious to live peaceably and justly in civil society, shall in no ways be molested or prejudiced in their religious persuasion or practice, in matter of faith and worship, nor shall they be compelled at any time to frequent or maintain any religious worship, place or ministry whatever." 5 Sm. L. 417.

This declaration was substantially reiterated in the charter of privileges granted by William Penn, dated the 28th October, 1701.

Notwithstanding this liberal and just platform of government, inviting settlers from the old world to the new, seemed to guaranty immunity to every religious society, in the exercise of their religious worship, it was enacted by the British Parliament in manner to include the province of Pennsylvania, by the 11 and 12 William III, chapter 14, [1700], as follows:

"And for a further remedy against the growth of Popery, over and beyond the good laws already made, be it further enacted by the authority aforesaid, that if any Popish bishop, priest or Jesuit whatsoever, shall say mass, or exercise any other part of the office or function of a Popish bishop or priest within these realms, *or the dominions thereunto belonging*, or if any papist, or person making profession of the Popish religion, shall keep school, or shall take upon themselves the education, or government, or boarding of youth in any place within this realm, *or the dominions thereunto belonging*, such person or persons, being thereof lawfully convicted, that then every such person shall, on such conviction, be *adjudged to perpetual imprisonment*, in such place or places within this kingdom, as the King, by advice of his privy council, shall appoint."

The act of 6th February, 1731, Pennsylvania deferring to the then state of the law, by its terms excluded Catholics. It is an act entitled "An Act for the enabling religious societies of *Protestants*, within this province, to purchase lands for burying grounds, churches, houses of worship, schools, &c.," and the titles of such are confirmed. It is further enacted, "that it shall and may be lawful to and for any religious *society of Protestants*, within this province, to purchase, take and receive by gift, grant or otherwise, for burying grounds, erecting churches, houses of religious worship, schools and alms houses, for any estate whatsoever, and to hold the same for the uses aforesaid, of the Lord of the fee, by the accustomed rents."

But the Constitutions of 1776 and 1790 must be taken to have put all reli-

gious societies upon a footing of equality, at least in all other respects than as regards a legal authority to hold property for religious or charitable purposes. No statute, however, is traceable expressly authorizing all religious societies to hold property in such terms as to include Catholics, before those to be noticed.

The earliest charters granted to Catholic churches in Pennsylvania, it is believed, were those of St. Mary's church, and of the Holy Trinity church, of Philadelphia, by acts of Assembly in 1788, and that by the Supreme Court, to the "Brothers of the Order of Hermits, of St. Augustine," in that city, in 1804. It was the act of 1791, conferring upon the Supreme Court authority to incorporate religious societies, without discrimination, that, so far as it appears, by general enactment, first enabled Catholic churches to acquire and hold property for religious uses. But without incorporation, they were not, by any statute, authorized to hold property until the acts of 1841 and 1842, which authorized *any religious* society, although not incorporated, to acquire and hold "lands and tenements for burying grounds, churches, parsonages, school houses and almshouses."

At this period, for the first time in Pennsylvania, all religious societies were placed as they should have been, at least from the 4th of July, 1776, upon a footing of perfect equality. But this equality lasted but two years. On the 20th of February, 1844, (pamphlet laws, 62,) was passed a law conferring upon the Roman Catholic Bishop, of Philadelphia, and *his successors*, and on the Roman Catholic Bishop of Pittsburg, and *his successors*, capacity to take and hold lands, tenements, and other property, for the support and maintenance of any hospital, almshouse, seminary, church or parsonage, or other religious or charitable purpose, within this Commonwealth; and to such persons as should be in *future, the successors of the same*, as Roman Catholic Bishops of Philadelphia or Pittsburg.

This is a capacity and power beyond that conferred upon any other religious society, giving to those Bishops peculiar and unusual facilities, in holding and transmitting the title to property for the designated purposes, and that without any restriction or limitation whatsoever. These two persons, mortal in their natural capacity, are thus, in their official capacity, vested with a legal immortality. No deed, no will or other instrument, is required to transmit the property held by an incumbent to his successor; but whensoever he dies or is removed, the title, by force of law, is transferred to the successor in office. He who fills the office, therefore, transfers, by his appointment, the title to the appointee. Thus, the highest attribute of a corporation, that of perpetual succession, is by law conferred upon an individual living man. He is a *quasi* corporation sole, of which the succession is kept up by the appointment of the spiritual head of the Catholic church—the Pope of Rome. He may be a citizen or he may be an alien, yet he is equally vested with the title and the revenues of property, only limited in amount by the ability of the Catholic church and its members, at home or abroad, to supply the means of purchase. Thus two individuals are authorized to acquire and hold all the property held for the Catholic church, its charities, cemeteries and seminaries within the State, which, it is believed, cannot be less in value than approaching two millions of dollars. Thus, too, the office of a Roman Catholic Bishop has obtained a legal recognition and existence, that is extended to no other Bishop or ecclesiastical dignitary so far as relates to the legal title to the temporalities of the church. Of the twenty-two churches in Philadelphia, all are vested in the Bishop but two; and other property, there and elsewhere, probably in an equal proportion. But upon what trust? The following extract from a deed of record in that city, covering a large portion of those churches will shew, to wit: that the same "shall serve and be used, occupied and enjoyed for religious purposes by the Roman Catholic congregation, worshipping and to worship thereat forever, *subject to such rules and regulations,*

temporal and spiritual, as may be made from time to time, by the said Bishop, for the time being."

Thus, the Bishop holds the legal title to himself and his successors forever ; thus, too, he makes the rules and regulations, temporal and spiritual, for the occupation and enjoyment of all the property by him held ; and, thus, that dominion which constitutes a full ownership over the legal and equitable title are concentrated in the Bishop. He is, moreover, by his spiritual office, vested with a control that would be but little less absolute over the temporalities if the title were vested in others, for he can, when in his judgment the ecclesiastical occasion arises, close the church door against religious worship, and the cemetery against the burial of the dead.

The bill that proposes to correct the unequal legislation that has given rise to this concentration of property and power into the hands of two church dignitaries, was read in place on the seventeenth of January last, and extensively noticed by the press. The only remonstrances against it are from the Bishop of Pittsburg, the vicar general in behalf of the Bishop of Philadelphia, two church congregations in Lancaster, one in Schuylkill, two from Cambria and one in Harrisburg. These place their objections chiefly upon two grounds : one the interference with legal or constitutional rights ; the other the incompatibility of lay trusteeships with the Catholic system and the character of its church members. The former view has already been met, and it is enough to state that it is by authority of law only, that property may be carried into perpetuity or mortmain at all, whether corporate or incorporate ; it is by leave of the law only, that aliens may purchase and hold lands in the State ; it is by law only, that corporations, aggregate or sole, are created or vested with the power to hold property, and that, of course, only upon such terms as the State shall prescribe ; it was by the act of 1844, that the Bishops were invested with the extraordinary power, to preserve which, is the sole object of these remonstrances. Where, then, is the violation of legal or constitutional right in modifying or repealing a law which the Legislature has improvidently made, taking care to divest no right of property ? The capacity of a perpetual official succession conferred by the Legislature, the Legislature is surely competent to recall. There is no vested right, because once clothed with that capacity, that the Bishops should in perpetuity enjoy that capacity against the legislative will. There was no contracted obligation to place them, in this respect, beyond the power of the law, nor any consideration for it.

The objection of inconvenience, because repugnant to the church system and character of the Catholics, if well founded, would be one of discouragement to the friends of popular government. Our institutions are based, and must forever stand, upon the admitted capacity of the people to govern themselves, and if competent to that high purpose, surely Catholics can be found competent to manage their own church property. It is insisted that effectually to control their church members, the title to the church property must be in the hands that administer its discipline, and that besides the spiritual, these must be permitted to hold a civil authority. Referring to the disorders that would result from a lay participation in the management of the church temporalities, the Bishop of Pittsburg says : "Such must always be the result, more or less, when the *title to the church building* and the *administration of its discipline* are in *different hands*, unless the decisions of those who hold the latter are vested with a *civil binding character*." If such be the result of the existing system, it cannot but afford an argument that an increased confidence should be placed in the laity, and a participation be granted them in the management of the temporalities of the church, for then their teachers must instruct and improve them for the discharge of their duties, a process that could not fail to be productive of mutual benefit to the priest and the people. Yet the Legislature claims no right to interfere with matters of church discipline ; but what property, to what extent, for what purposes, and by whom property may be held and administered, for religious and charitable uses, the

Legislature is competent to decide, and must decide by a just and careful regard to the welfare, security and happiness of the whole people; and the time to decide is as soon as the evil and danger is perceived, and before it has become, by time, inveterate and difficult of remedy.

But the incapacity in the members of the Catholic church to aid in the management of the temporalities of their churches and charities, which their own contributions have created, cannot be conceded. Although it be true that many of that persuasion are landed upon our shores with different national characteristics, there may be found, in any congregation, a large proportion of respectable and well disposed persons, competent to aid in the care of the church property, and who would be improved by such mark of confidence, and the association, thereby induced, with those of better education. It has not followed, as Protestants have prognosticated, that in this free country, with its common schools, newspapers, system of self government, complete toleration of all religions, and even with the open Bible furnished every where and to every body, that the number and power of the Catholics has diminished, or that their educated members frequently abandon their church. On the contrary, with all sources of information and light here shed upon them, they remain, when enlightened and sharing the spirit of freedom that surrounds them, remarkably true to their faith, and take a just distinction between the spiritual obedience which they owe to those in authority in their church, and their civil and political rights and liberty.

Is it inquired, then, why have they not spoken in petitions to the Legislature? There is a reason, which members of that church have indicated; and who have not failed—in a manner to be regarded confidential as to names—to make their wishes known to the chairman of the committee. One writes—“It is not prudent for me to favor any bill our clergy oppose. They call out, at once, *‘opposing the church.’* but I may say to you, in confidence, that not only the writer, but every Catholic gentleman (about twenty) with whom I conversed on the subject, with one exception, are in favor of your bill, and hope it will pass. We do not think it wise, in this country, by what may be called a perpetual entail, to accumulate large masses of property in the hands of our bishops.” Another, yet more cautious of his name, gets an eminent counsellor to write thus—“I was requested to say to you, by an intelligent Catholic gentleman, well known to me, that the bill in reference to church property meets with his cordial approbation, and is regarded favorably by very many of the sincere and well meaning of his faith. Their *private* opinion runs with the proposed law, while *apparently* they are opposed to it. It is, to be sure, a matter of regret to find the priesthood so potential as to check and overawe an honest expression of sentiment on so vital a question.” Another Catholic gentleman, of high intelligence, writes over his signature—“I have conversed with a number of intelligent gentlemen, prominent and influential Catholics, who are unanimous in favor of the bill. As a matter of civil policy,” he continues, “the too great accumulation of wealth in the hands of a few persons, with a view to perpetuity, should be carefully guarded against. It enervates as well corporations as individuals, and fosters arrogance, besides tending to produce inequalities in society. In the hands of bad men it becomes powerful in oppression. Aggregation of wealth and power tends to corruption, as well in things religious as secular; and when pure, it is easier to remain so than recover from perversion. These views, I humbly think, should warrant the passage of the bill, as eminently republican. Looking at it, from a religious point of view, even were I a Protestant, anxious as well for the integrity as the prosperity of my church, I would still favor the law. Past history teaches us that religious establishments, when become very wealthy, have excited the jealousy and envy of the civil powers; confiscations of church property have often followed; and where such objects are sought, pretexts may easily be found. I would, therefore, by wholesome laws, preserve a just balance, and neither endanger the rights of my church nor tempt the

cupidity of the people." Thus speaks the intelligent Catholic, imbued with the spirit of American liberty and the wisdom taught by the lessons of history, yet true and earnest in the faith of his church. Protestants, at least, should not too readily admit the belief of the incapacity of Catholics to aid in the administration of the church temporalities, or that they have not as earnest an appreciation of human liberty as themselves, since Catholics, side by side with Protestants, achieved and yet sustain the liberties of Switzerland and America.

Though so much has been said having special relation to the Catholics, the bill, it must be kept in mind, was framed with a purpose of prescribing rules of law for all religious societies alike. It is because Catholics alone have remonstrated that their objections have required, and respectfully received, an especial consideration; and yet I have cautiously refrained from noticing many of those peculiar institutions and tendencies to concentrate power in the hands of the clergy and hierarchy of that church, which are so often noticed by Protestants, in their polemical and sectarian controversies. As legislators, it is not our province to enter into disquisitions upon subjects that we have no right to interfere with, further than as they relate to the acquisition and mode of holding property that is subject to be governed by rules of legislative enactment. So far as the bill is restrictive of a prior mode or extent of enjoyment of property, it is but defensive of the rights of all other citizens encroached upon, to the precise extent that any peculiar privileges had been conferred. It is a small exercise of power, indeed, compared with that which many Catholic governments have exercised, either in self defence or in the spirit of cupidity, against incessant and undue accumulation of property and power by the church. Their restraints were often, and yet threaten to be, but ruthless confiscations, which can never happen in the United States, without a revolution that shall break down the securities and protection afforded by our constitutions.

That the vast accumulations of the church excited the cupidity of unjust men, and became the source of its weakness, was illustrated in the seizures of the possessions of the religious houses and churches by Henry VIII, by the French revolutionists, and by the governments of other countries, as they underwent religious or political revolution. In all Catholic countries the clergy and church property are subject to the temporal law, whatever spiritual pretensions may be made to the contrary. The "*Code des lois Ecclesiastiques*," published in Paris in 1842, sets out with the assertion as to the French law, that "the clergy find themselves beset on all sides by a legislation rarely favorable, often defiant, jealous, hostile to the church." The Austrian government subjects ecclesiastical acts to the temporal revision, that they may not be obnoxious to the interests of the state. Catholic Sardinia is now threatening to suppress the convents and religious communities, and confiscate their estates, and the church property is looked to as a resource to supply the failing revenues of Catholic Spain. Mr. Brownson, the editor of the Catholic Quarterly Review, sorrowfully laments the truth he admits, that Catholic governments have the most severely dealt with his church. He says: "We cannot name a single professedly Catholic state that has afforded, for these three hundred years, more than a momentary consolation to the Holy Father. The bitterest enemies of the Holy Father have been of his own household, and the only sovereigns in the eighteenth century, and the first half of the nineteenth, that treated him with respect, were, we grieve to say it, sovereigns separated from his communion." And it will remain to be true after the passage of this bill, as the same earnest and vigorous Catholic editor admitted it before to be, when he wrote as follows: "We have, as Catholics, not a few grievances to complain of in this country, but there is no Catholic country in the world where the church is as free and independent as she is here, none where the Pope is so truly Pope, and finds, so far as Catholics are concerned, so little resistance to the full exercise of his authority, as visible

Head of the church. The reason is, not that the government here favors or protects the church, but that it lets her alone." This is nearly true, as it ought to be quite true, but is only not quite true, since this government did lend its sovereign aid to enact the statute of 1844, to confer upon the Bishops of that church an especial and extraordinary faculty of acquiring, holding and administering all the property of that church and its charities; which when repealed, they like all other sects, will be let alone, to increase, prosper and flourish under the just and beneficent influences of laws that will protect all alike, from intrusion or invasion of their spiritual or temporal rights. But to be let alone in the sense of a liberty to acquire and hold property in mortmain to any amount, is a privilege to be conceded to no religious persuasion.

It is against the repeal of that act that the whole argument of the remonstrants is directed. They say repeal not that act conferring on the hierarchy a special privilege, and bring not the laity into a participation of the trusteeship of the church temporalities, and nothing further is objected to. But it is precisely that enactment that confers a preference upon the Catholic church over all others, excludes all lay trustees, and violates both the letter and spirit of the Constitution. It is that act alone that threatens an accumulation of property and power in a single hand, dangerous to the welfare of the Catholic citizens of the State, equally entitled to protection with other citizens, though not wholly free to demand it, and injurious to the whole community in its absorption of property from all the common business uses and purposes of mankind.

Besides the remonstrances and letters received, two of the committee of the Senate had a long and interesting interview with the intelligent and courteous Bishop of Pittsburg, and vicar general in behalf of the Bishop of Philadelphia, and found their only difficulty in reconciling those officers of the church to the provisions of the bill, was that above stated. They had hoped their explanation might prove satisfactory to those ecclesiastical gentlemen, but a letter since received from Bishop O'Conner, continues to suggest his proposed proviso to the sixth section, which, as it would continue in operation the act of 1844, the committee was not able to reconcile it to their sense of duty to adopt the proviso.

I have not noticed several letters received from Mr. Frenaye, who assists the bishop in managing the temporalities of the church in Philadelphia, because, evidently, not intended for any other than the chairman. As the answer of the latter to him invited the remonstrances, and those are in response to that letter as well as to the bill, it is proper that it should be annexed to these remarks. It asserts the nature of the trust of the church property; it was read by the principal remonstrants, and that trust is not denied. It will further shew the candor and freedom with which the subject has been discussed on both sides, as well as the kind and friendly spirit in which it has been treated.

In the discharge of the duty that has devolved upon us, as legislators, there has been no occasion to make any reflections upon any persons, nor have we experienced any acrimony from those opposing legislation. In adjusting the law of the land to the line prescribed by the Constitution, and a sound statesmanship, there is no cause for censure or acrimony. That Catholics will, after the repeal of the act in question, continue to increase and prosper under our equal and just laws, no one can doubt, and that they should continue to exist as one of the large religious persuasions of the United States could not, in the eye of even Protestant statesmen, be regarded as a misfortune; because, from all the people, the nation derives its strength and prosperity, and by the division of all into sects, and those of no sect, the liberty and security of all are maintained; each is kept from obtaining a dangerous preponderance, or with the occasion the balance of power is re-adjusted. Whatever, too, may be the strength of our Protestant prejudice, growing out of great abuses and excesses of power in past ages and centuries, and whatever the repugnance

of Protestant freemen to the submission of Catholics to an alleged priestly domination, we must admit that that influence over turbulent dispositions may be worth, for the public peace, as alleged in one of the letters received "more than a thousand revolvers;" nor can some of us forget nor fail to remember, with grateful admiration, the times when pestilence and death swept over the land, and the stout heart of man was appalled, there were found to volunteer into the wards of our hospitals, to be the nurses and comforters of the sick and dying, women—braver than soldiers that lead a forlorn hope—women—so self-sacrificing and devoted to the service of humanity, as no other religious community on the face of the earth, ever sent forth to relieve human suffering—the Sisters of Charity of the Catholic church. Nor should we, as sober legislators, unwisely forget, while listening to the swelling notes of party triumphs, that the day may come when some other great and growing religious persuasion may cast its influence into the political canvass, and seek to strengthen and aggrandize itself by the aid of the temporal power, when the weak and endangered will be compelled to appeal to all the opposing elements to resist oppression. It may happen, too, that the slightest, perhaps despised, men—ignorant and turbulent though they may be—and foreign and Catholic—the men who dig our ditches, make our canals and railroads, labor upon our farms and clear our forests—will be called upon to defend our country, as they have been before, and not in vain, while many of us will repose securely behind their gathered ranks of valient hearts. Nor will it be wise to forget that, while we accomplish an act of legislative justice, we can never go one jot beyond the rule of right, without incurring the danger of turning the tide of human sympathy against us, always, to the glory of our humanity, ready to succor the weak and oppressed, and to cause the persecuted to rise, to flourish and to triumph. And it will be well if we shall always be so prudent as to disappoint the expectation of those who already make their calculation upon the advantages and strength to be derived from this re-acting, generous sympathy, and by adhering to rigid right, both remove the feeling of wrong and persecution, and escape the error of affording the pretext for such an accusation.

It becomes us all to be ever mindful, too, that one of the most remarkable features of the great republican example we are holding up to the world is, that of a perfect religious toleration—where all sects and those of none live in amity, and by common consent uphold a government of their common choice. Under that government all obtain a complete protection and immunity for the rights of conscience and religious worship, a security not less precious than that of their civil and political liberty. As parts of one political community, as co-partners in the same government, the rights and feelings, and even prejudices of each religious persuasion, should receive from every other a respectful deference, the kindness and courtesy that characterizes the deportment of well conducted individuals in civilized society, and that charity that crowns the christian virtues.

The mutuality of obligation and duty of all christian sects to live in harmony together, no one of them seeking a preference to create jealousy and alarm in others, will be further apparent to those who reflect, that the members of each find in the members of the others, and in the whole body of the people, that constitute the public opinion of the nation, a refuge and security that can never be found in a nation tolerating but a single religion. All intelligent Catholics must know and feel that the events that make their remote church history the dread and warning of mankind, can never be repeated in an age and nation when and where they are surrounded by Protestants; and all christians, Catholic or Protestant, should know and feel that there are constantly arising common enemies of their faith, to be combatted and counter-vailed by their united power. Infidelity exists every where, and an extraordinary form of it is growing to a head that will soon demand recognition as one of the associated States of our Union. The strength and efficiency of

that religion by which civilization and pure morals and a holy worship have chiefly triumphed and advanced the happiness of mankind, should never be impaired by dissensions among the followers of the same acknowledged author of their faith. Their differences should only be known in their rivalry to promote the happiness of the people, and the spiritual kingdom of the Saviour of men.

The further sections of the bill are unobjected to by any parties, and are obvious in their purpose. One of them will save to the purposes of religion and charity many bequests and devises that are now lost by the decisions of the courts, under rules that over-ride the clear intention of the testator so frequently as to amount to a denial, if not a mal-administration of justice. Another rescues the dying from importunity and from self-imposition in the trying period that precedes dissolution, and compels him, if determined to give his property from his family and relations, to do it with deliberation, while his mind retains the power to make a just and uninfluenced disposition of his property. And the scope and design of the whole bill is to establish general regulations of law that shall be alike protective of all religious and charitable investments, and the security and welfare of the whole people.

The general purpose of the bill is not to meet any temporary occasion or to restrain any particular sect. It is intended as an enduring measure, and to be equally operative upon all religious persuasions. They are all made up of human imperfection, especially liable, when invested with power, to abuse it, and to become oppressive in the degree in which responsibility is removed. It is in vain to deny, to palliate or excuse the wrongs and oppressions inflicted upon our race by all classes ever invested with enduring authority over their fellow-beings; and it is our duty to legislate in reference to dangers that proceed from an inherent propensity in man, when possessed of irresponsible power, to become selfish, impatient of opposition, and to resist what is believed to be error, by punishment and force, and that even in regard to errors of opinion that concern man's salvation in a future existence. The prerogative of the Great and Final Judge is vindictively anticipated by fallible man against his fellow-man.

And though the history of one sect from its vastly greater sphere and duration of power, may be fuller of illustrations of the truth here asserted, it cannot be denied but that all other sects, when invested with power, have, with but few exceptions, become alike oppressive and tyrannical. In proof may be named the Calvinists of Switzerland, the Established Church of England, the Puritans of New England, Lutherans in New York; and though having felt, and some of them fled from oppression, still willing in turn, as soon as possessed of opportunity, to become oppressors, and to scourge, imprison and execute their fellow-beings for alleged errors of religious opinion. The notable exceptions were the founders of the Commonwealths of Pennsylvania and Maryland—the one a Quaker and Minister of the Gospel in his religious society, yet tolerant, and a century in advance of his age, as a philanthropist and statesman—the other a Catholic, a layman, of titled rank, but taught in the school of oppression, was humane and wise enough to establish in his colony that toleration denied to his religion in his native land. In this regard, the names of William Penn and Lord Baltimore will forever stand honorably associated, with a lustre to become more bright by time, as the world shall become more enlightened and appreciative of their glorious example.

This great principle of religious toleration is now embalmed in our Constitutions, to be perpetuated while they shall stand prohibitive of any preference of modes of worship, to endure as long as liberty shall be cherished, and free institutions be upheld by the American people.

LETTER REFERRED TO.

SENATE CHAMBER,
January 28, 1855. }

DEAR SIR:—I have received your several letters of the 24th, 25th and 27th instant. I have delayed replying, both on account of constant occupation, and from a desire to give full consideration to your views.

I thank you for the friendly feeling your letters manifests towards me, and the confidence you place in my integrity. You do not miscalculate in supposing that if I were convinced that the bill would do mischief, I would myself make known to the Senate my change of views. This it would be both my duty and pleasure to do; and if my mind should not undergo such change I will let the Senate know what are your objections, that they may take them into consideration. Indeed, I think they should be embodied into a memorial and read to the Senate. I am of the opinion that the Senators on this subject will be disposed to do what they think the general good requires. I have had very little conference with them upon it; and I have prepared the bill uninfluenced by the views of the new party, to which I do not belong. All parties here know well that I am pledged only to go for what is right, and that with any I will go for the right, or against any for it. You see, therefore, that I am without any of the influences of partisan ties, and that every measure I advocate must be carried on its intrinsic merits. It is true that I have great confidence in this reliance; a proof that I feel that I am surrounded by men of intelligent understandings and of the highest integrity and honor.

I will now proceed to state to you the principal grounds on which I have framed the parts of the bill relating to religious and charitable uses, to which you object. I do not thereby expect to convince you, wedded as you are to your present system of holding church property, but hope to retain your good opinion as to the honesty of my motives. You perceive that the bill, in all its parts, carefully guards the vested rights of property, and that to whatever extent now held, no attempt is made to reduce it, but only to place guards against an undue amount being monopolized in mortmain, to the injury of business and commerce, and to the undue temporal ascendancy of an ecclesiastical hierarchy. This became the policy of England in a succession of statutes during nearly three hundred years before that country ceased to be Catholic; and it has been the policy, to a greater or less extent, pursued in all other Catholic countries, except the Papal dominions. For the like reasons this should not the less be the policy of Pennsylvania legislation.

Again, in this country, where we can have no State religion, nor allow any preference to any sect, but all must stand absolutely alike before impartial laws and an impartial government, no one sect can safely be allowed to obtain peculiar legislative favors and facilities, nor can any one safely take them, without incurring the danger of a hostile combination of all others against it. It is thus, that by having many sects, of which no one is a majority of the people, that we can maintain the absolute impartiality of the law in respect to all; and happy is it for our beloved country that it is so, for no one sect could obtain a political ascendancy, without to a certainty, destroying both our civil and religious liberty; each of which, and each most precious, would thereby be fatally involved. You refer to me as one of the peaceful Society of Friends. This is an error, as I belong to no sect or religious society; but with all the partiality of an education derived from parents eminently useful in that society, I assure you that I would no sooner trust it with civil and political power than any other, as the danger would in time result alike from the ascendancy of any one. In a firm and unflinching adherence to this great principle of American liberty, depends at this moment the immunity and safety of the Catholic church and her property, and in turn it has been, and will continue to be, the only safe-guard of every other religious society.

Now, in my apprehension, the Catholic church, in an unadvised moment, has taken a step and obtained legislation, in Pennsylvania, for her particular advantage, justly calculated to alarm the jealousy of all other religious societies, and to invade the principle of preserving all in an absolute equality before the law. By the act of 1844, the Catholic Bishop of Philadelphia, and the Catholic Bishop of Pittsburg, are respectively made capable of holding property, and of transmitting it by operation of law to their successor in that office; thus, as you say, "became incorporated." With this highest attribute of a corporation sole, and without any limitation as to the amount of property they may hold, and by virtue of that act taking, the one all the Catholic property (with small exception) east, and the other, that west of the mountains, "subject to such rules and regulations, *temporal* and spiritual, *as may be made from time to time by said Bishop, for the time being*," as in the declaration of the Bishop of Philadelphia, of March 10, 1848, is contained, as that on which the property of the eastern diocese is held, it cannot but be felt by all impartial observers, that here is the commencement of a power to monopolize, absorb from the uses of commerce and of mankind, and hold in a *dead hand*, property to any amount, with a power to wield it by a single will that is dangerous to the welfare and threatening to the safety of the community, as well Catholics as others. The holder of such property fast accumulating to millions, with the potent spiritual control over Catholics, possessed by a Catholic Bishop, not holding it as the inanimate statute, without hands to execute, as you say, but if the trust declared be valid, with the absolute power, both to declare the trusts, and to dispose of the property as he pleases, or as pleases him by whose authority he holds his dignity and office, during every moment that he does hold it, must, indeed, be regarded as of dangerous tendency, by all those whose devotion to the dominion of the Catholic church, does not blind them to the great temporal evils that must inevitably flow from the perpetuation of such a system.

I have never doubted the patriotism of the Catholic people of our country: that was manifested abundantly during our Revolutionary, and second English war; and again when the American arms were carried triumphantly to the capitol of Catholic Mexico. But it is not well for our people of all sects, it is not well for Catholics, it is not well for the Roman Catholic hierarchy that power and property should be thus allowed to concentrate in the single representative of the Pope, himself holding the title and himself declaring the trusts, with the consequent power to close the church door and shut the grave yard gate at his own pleasure, for at some time or other, as all history has shown us, there must follow a reaction against it, even by Catholics themselves, that will break it up, if need be, even by the power of revolution.—Believing that such encroachments and such perpetually operative acquisitions, by ecclesiastical officers, enjoying a legal perpetuity of existence, must inevitably beget a reaction fearful to the institution itself, and disastrous to the peace and welfare of our country, it becomes the imperative duty of all capable of foreseeing the consequences to avert, in time, the prolific sources of evil. It is the more incumbent too for the American statesman thus to stand the faithful sentinel over the rights of his fellow citizens, since whensoever property shall once be thus acquired in mortmain, it forever becomes intangible to the power of legislation as to all vested rights therein, under the immunity afforded by our constitutions, while the more absolute governments of Europe could reach and control the evil when grown to an intolerable head. I can but foresee and prevent the growth of evils, or leave them to grow and wait that period of correction that shall by revolution upturn and prostrate the constitutions of our republican governments. When that period shall arrive, then the accumulated property of all churches may share the fate of the property of the Catholic churches, monasteries, schools and cemeteries, by the hands of Henry VIII, of England, or of the revolutionists of France. Let

the churches not unwisely provoke to revolution, or present the tempting prize to cupidity and wickedness.

The proper cautions and safe-guards are these:—not to accumulate too much property; to spend its income freely in objects of beneficence, charity and religion; divide it into the uses and management of many congregations and charitable associations; not excluding therefrom the clergy or laity, but weaving both into the management, thus avoiding antagonism between the two classes, and educating the people to a participation in acts of usefulness and humanity. Thus they will be kept interested and bound to the church in the same affections that you yourself are, and help to keep it pure and free from abuses. Such co-operation and reciprocal influences will cement the people and priesthood more into one brotherhood, and better subserve the cause of true religion.

Fear not that under such a system, with many corporations to hold the property, each having the power to transmit the title in perpetuity without incurring the inconveniences to which you advert, that the bishop and priests would lose either their influence or the church property. Their rightful influence over the people is but a spiritual influence, that is to act upon the minds of men in the spirit of Him whom they profess to follow, and who declared that his kingdom was not of this world. They would still retain the power, under the peculiar institution of the Catholic church itself, but one great close corporation with a single head, and having endured as such from near the Christian era, of controlling the disposition of the property devoted to the uses of the church or its charities. If the trusts be declared for a Catholic congregation, a Catholic seminary, a Catholic cemetery, &c., and the members cease to be Catholic, as they may by the act of the Bishop, or the fiat of the Pope for non-conformity, or infidelity to the true Catholic faith, then would they by our law, that law which achieved for the Bishop the victories you have spoken of, cease to have any rights in the property, and other Catholics would be introduced into its use and enjoyment.

Your suggestion that the State should become trustee of your property, while it shews a liberal confidence, on your part, is a step not to be thought of, as it might produce evil influences here, and it would be alien to the spirit of our government that it should so far become connected with the temporalities of any church.

You have nothing to fear from any one, as to a perfect immunity as to your rights of property. All that is asked is, that you and all other religious societies shall hold under uniform provisions of law, conferring equal rights upon all, and suffering none to accumulate, beyond what they now have, to an extent to prove dangerous to the welfare of the community. It is for good, and good alone, and not evil, that we seek to afford timely legislation to avert great, growing and inevitably impending evils.

I am, with sincere regard,

Your friend, &c.,

ELI K. PRICE.

To M. A. FRENAYE, Esq.